

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

**Trial Court Restructuring Clean-Up:
Obsolete “Constable” References**

October 2018

California Law Revision Commission
c/o UC Davis School of Law
Davis, CA 95616
www.clrc.ca.gov

NOTE

This report includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were already operative, since their primary purpose is to explain the law as it will exist to those who will have occasion to use it after it is operative. The Comments are legislative history and are entitled to substantial weight in construing the statutory provisions. For a discussion of cases addressing the use of Law Revision Commission materials in ascertaining legislative intent, see the Commission’s most recent *Annual Report*.

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CALIFORNIA LAW REVISION COMMISSION

c/o UC Davis School of Law
Davis, CA 95616

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October 11, 2018

To: The Honorable Edmund G. Brown, Jr.
Governor of California, and
The Legislature of California

In the past, constables and deputy constables provided court security services for justice courts. Upon elimination of the justice courts in 1995, most statutory references to constables and deputy constables became obsolete.

Many of those references have already been deleted from the codes. The Law Revision Commission examined the remaining statutory references to constables and deputy constables, and determined that they fall into three categories:

- (1) *Constable References in Code Sections Previously Amended by a Statewide Initiative*. Two Penal Code provisions still refer to constables (Penal Code §§ 412, 413). These provisions cannot be amended through the normal legislative process, because they were last amended through a statewide vote on an initiative measure. The Commission recommends that they be amended through the initiative process to delete the obsolete references to constables. Due to the cost of that process, however, a stand-alone measure is not warranted. It appears preferable to

combine these technical amendments with other reforms when an appropriate opportunity arises.

- (2) *Retirement-Related References to Constables.* Most of the remaining statutory references to constables and deputy constables relate to retirement benefits of such employees. The Commission is inclined to leave those provisions alone, because they may have continuing relevance.
- (3) *Other References to Constables.* Only one other code section still refers to constables (Corp. Code § 14502). The Commission recommends that it be amended to delete the obsolete reference to constables.

This recommendation was prepared pursuant to Government Code Section 71674 and Resolution Chapter 150 of the Statutes of 2016.

Respectfully submitted,
Jane McAllister
Chairperson

TRIAL COURT RESTRUCTURING CLEAN-UP: OBSOLETE “CONSTABLE” REFERENCES

The Law Revision Commission is responsible for determining whether any statutory provisions are obsolete due to several major reforms of California’s trial court system that occurred around the turn of the century.¹ In fulfilling that responsibility, the Commission has made numerous recommendations to the Legislature and the Governor,² resulting in amendment or repeal of hundreds of code sections.³

1. See Gov’t Code § 71674; see also 2016 Cal. Stat. res. ch. 150.

2. See *Statutes Made Obsolete by Trial Court Restructuring: Part 1*, 32 Cal. L. Revision Comm’n Reports 1 (2002) (hereafter, “*TCR: Part 1*”); *Statutes Made Obsolete by Trial Court Restructuring: Part 2*, 33 Cal. L. Revision Comm’n Reports 169 (2003) (hereafter, “*TCR: Part 2*”); *Statutes Made Obsolete by Trial Court Restructuring: Part 3*, 36 Cal. L. Revision Comm’n Reports 341 (2006) (hereafter, “*TCR: Part 3*”); *Statutes Made Obsolete by Trial Court Restructuring: Part 4*, 37 Cal. L. Revision Comm’n Reports 171 (2007) (hereafter, “*TCR: Part 4*”); *Trial Court Restructuring: Transfer of Case Based on Lack of Jurisdiction*, 37 Cal. L. Revision Comm’n Reports 195 (2007); *Statutes Made Obsolete by Trial Court Restructuring: Part 5*, 39 Cal. L. Revision Comm’n Reports 109 (2009) (hereafter, “*TCR: Part 5*”); *Trial Court Restructuring: Rights and Responsibilities of the County as Compared to the Superior Court (Part 1)*, 39 Cal. L. Revision Comm’n Reports 157 (2009) (hereafter, “*TCR: Court & County #1*”); *Trial Court Restructuring: Appellate Jurisdiction of Bail Forfeiture*, 41 Cal. L. Revision Comm’n Reports 265 (2011) (hereafter, “*TCR: Bail Forfeiture (2011)*”); *Trial Court Restructuring: Writ Jurisdiction in a Small Claims Case*, 41 Cal. L. Revision Comm’n Reports 315 (2011) (hereafter, “*TCR: Writ Jurisdiction*”); see also *Civil Procedure: Technical Corrections*, 30 Cal. L. Revision Comm’n Reports 479 (2000); *Authority of Court Commissioner*, 33 Cal. L. Revision Comm’n Reports 673 (2003).

3. See 2002 Cal. Stat. ch. 784 (implementing recommendation on *TCR: Part 1*); 2003 Cal. Stat. ch. 149 (implementing recommendation on *TCR: Part 2*); 2007 Cal. Stat. ch. 43 (implementing recommendation on *TCR: Part 3*); 2008 Cal. Stat. ch. 56 (implementing recommendations on *TCR: Part 4* and *Transfer of Case Based on Lack of Jurisdiction*); 2010 Cal. Stat. ch. 212, §§ 2, 3, 6, 7, 8, 10, 11, 12 (partially implementing recommendation on *TCR: Part 5*); 2012 Cal.

This recommendation continues the Commission’s work on trial court restructuring. It focuses on statutory references to “constables.”

Background

In the early 1990’s, California had three different types of trial courts: superior courts, municipal courts, and justice courts. Each type of court received security services from a different source. Sheriffs served the superior courts, marshals served the municipal courts, and constables served the justice courts.⁴

Today, superior courts are the only type of trial court left in California. Justice courts were eliminated statewide at the beginning of 1995, pursuant to a proposition approved by the voters.⁵ Municipal courts were eliminated more gradually, through county-by-county unification of the municipal and superior courts upon a majority vote of the judges in each type of court. The process started in mid-1998 and ended when the municipal and superior courts in Kings County unified in early 2001.⁶

Due to the elimination of the justice courts, constables no longer exist. In contrast, there are still some marshals, despite the elimination of the municipal courts. Those marshals serve superior courts, rather than municipal courts.⁷

Stat. ch. 470 (implementing recommendations on *TCR: Court & County #1*, *TCR: Writ Jurisdiction*, and *TCR: Bail Forfeiture (2011)*), and partially implementing recommendation on *TCR: Part 5*); see also 2001 Cal. Stat. ch. 44 (implementing recommendation on *Civil Procedure: Technical Corrections*); 2004 Cal. Stat. ch. 49 (implementing recommendation on *Authority of Court Commissioner*).

4. *TCR: Part 1*, *supra* note 2, at 7, 15.

5. See 1994 Cal. Stat. res. ch. 113 (SCA 7) (Prop. 191, approved Nov. 8, 1994 & operative Jan. 1, 1995).

6. See *TCR: Part 3*, *supra* note 2, at 311 & sources cited therein.

7. See Gov’t Code § 69921.5 (“Except for court security services provided by the marshal in the Counties of Shasta and Trinity, the sheriff is responsible for the necessary level of court security services”); see also

Statutory References to “Constables”

When constables were eliminated, most statutory references to constables became obsolete. On recommendation of the Commission, many code sections have already been revised to delete such references.⁸

Some references to constables remain in the codes. Those references fall into three categories:

- References in code sections previously amended by a statewide initiative.
- Retirement-related references.
- Other references.

Each category is discussed below.

Constable References in Code Sections Previously Amended by a Statewide Initiative

Penal Code Sections 412 and 413 impose restrictions on boxing contests.⁹ They were enacted in the Penal Code of 1872 and later amended several times,¹⁰ most recently by a statewide initiative in 1914.¹¹

<http://www.shastacourts.com/Divisions/Marshal.shtml> (“The Shasta County Marshal’s Office is the law enforcement division of the Superior Court.”); <https://www.trinity.courts.ca.gov/security> (“The Marshal’s Office is the law enforcement arm of the Trinity Superior Court.”).

8. See, e.g., *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm’n Reports 51, 249-51, 302-03, 356-58, 361-62, 366, 372-77, 387-88, 398-401, 412-14, 506-07, 510, 556-59 (1998); 1998 Cal. Stat. ch. 931, §§ 139, 214, 215, 272, 274, 275, 285, 296, 313, 335, 347, 365, 366, 446-449, 451, 452, 478, 479.

9. For the text of Penal Code Sections 412 and 413, see the proposed amendments of those sections in “Recommended Statutory Revisions to Incorporate in an Initiative Measure” *infra*.

10. See 1899 Cal. Stat. ch. 121, § 1; 1903 Cal. Stat. ch. 283, §§ 1, 2.

11. The initiative measure was adopted at a statewide election on Nov. 3, 2014. For the text of the measure, see 1915 Cal. Stat., pp. 1930-32.

Both of these code sections refer to constables. Section 412 outlaws most boxing contests, permits an amateur boxing exhibition under certain conditions, and gives *constables* and other types of peace officers the right and duty to stop an amateur boxing exhibition when a contestant has been seriously injured or there is a danger of such injury. Under specified circumstances, Section 413 permits a magistrate to issue a warrant commanding a *constable* (or a sheriff, marshal, or policeman) to arrest a person accused of taking steps towards promoting or participating in an illegal boxing contest.

Because constables no longer exist, the references to them in Sections 412 and 413 are obsolete and should be deleted. That cannot be accomplished through the normal legislative process, however, because the current versions of those sections were adopted through a statewide vote on an initiative measure. Amending a section adopted in that manner (an “initiative statute”) requires a statewide vote unless the section expressly permits amendment without voter approval.¹²

The Commission thus recommends that Sections 412 and 413 be amended through the initiative process to delete the obsolete references to “constables.”¹³ That is a very expensive and burdensome process, however, so it would not make sense to propose such minor amendments in a separate initiative measure.

Rather, the proposed amendments of those sections should be incorporated into an appropriate measure that is broader in scope. The Commission does not anticipate proposing that type of measure in the foreseeable future. If another person or entity does so, they could consider including the Commission’s proposed amendments of Sections 412 and 413.

12. Cal. Const. art. II, § 10(c).

13. See the proposed amendments of Sections 412 and 413 in “Recommended Statutory Revisions to Incorporate in an Initiative Measure” *infra*.

Retirement-Related References to Constables

Most of the remaining statutory references to constables and deputy constables relate to retirement of such employees.¹⁴ It seems too early to presume that the references to constables in these code sections are obsolete. The justice courts were not eliminated until 1995, so there might still be some former constables or former deputy constables who are entitled to retirement benefits pursuant to the statutory schemes in question. The retirement-related references to constables and deputy constables should remain in place until it is clear that they no longer have any importance.

Other References to Constables

Only one other code section refers to constables: Corporations Code Section 14502. This extremely long section relates to humane officers (individuals appointed to enforce the laws for the prevention of cruelty to animals). Among many other things, it says that if a court confirms an appointment of a humane officer, the appointee shall “take and subscribe the oath of office prescribed for *constables* or other peace officers.”¹⁵

Because constables no longer exist, Section 14502 should no longer refer to their oath of office. Instead, it should just direct an appointee to “take and subscribe an oath of office prescribed for peace officers.” The Law Revision Commission proposes to amend the section in that manner.¹⁶

14. See Gov’t Code §§ 20437, 31469.1, 31470.2, 31470.25, 31904, 32050.5, 33003, 71300, 71301, 71302, 71303, 71305.

15. Corp. Code § 14502(c)(2) (emphasis added).

16. See “Proposed Legislation” *infra*.

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RECOMMENDED STATUTORY REVISIONS
TO INCORPORATE IN AN INITIATIVE
MEASURE

Penal Code § 412 (amended). Boxing contests

412. Any person, who, within this state, engages in, or instigates, aids, encourages, or does any act to further, a pugilistic contest, or fight, or ring or prize fight, or sparring or boxing exhibition, taking or to take place either within or without this state, between two or more persons, with or without gloves, for any price, reward or compensation, directly or indirectly, or who goes into training preparatory to such pugilistic contest, or fight, or ring or prize fight, or sparring or boxing exhibition, or acts as aider, abettor, backer, umpire, referee, trainer, second, surgeon, or assistant, at such pugilistic contest, or fight, or ring or prize fight, or sparring or boxing exhibition, or who sends or publishes a challenge or acceptance of a challenge, or who knowingly carries or delivers such challenge or acceptance, or who gives or takes or receives any tickets, tokens, prize, money, or thing of value, from any person or persons, for the purpose of seeing or witnessing any such pugilistic contest, or fight, or ring or prize fight, or sparring or boxing exhibition, or who, being the owner, lessee, agent, or occupant of any vessel, building, hotel, room, enclosure or ground, or any part thereof, whether for gain, hire, reward or gratuitously or otherwise, permits the same to be used or occupied for such a pugilistic contest, or fight, or ring or prize fight, or sparring or boxing exhibition, or who lays, makes, offers or accepts, a bet or bets, or wager or wagers, upon the result or any feature of any pugilistic contest, or fight, or ring or prize fight, or sparring or boxing exhibition, or acts as stakeholder of any such bet or bets, or wager or wagers, shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than one hundred dollars nor more than one thousand dollars and be imprisoned in the county jail not less than thirty days nor exceeding one year; provided, however, that amateur boxing exhibitions may be held within this state, of a limited number of rounds, not exceeding four of the duration of

three minutes each; the interval between each round shall be one minute, and the contestants weighing one hundred and forty-five pounds or over shall wear gloves of not less than eight ounces each in weight, and contestants weighing under one hundred and forty-five pounds may wear gloves of not less than six ounces each in weight. All gloves used by contestants in such amateur boxing exhibitions shall be so constructed, as that the soft padding between the outside coverings shall be evenly distributed over the back of said gloves and cover the knuckles and back of the hands. And no bandages of any kind shall be used on the hands or arms of the contestants. For the purpose of this statute an amateur boxing exhibition shall be and is hereby defined as one in which no contestant has received or shall receive in any form, directly or indirectly, any money, prize, reward or compensation either for the expenses of training for such contest or for taking part therein, except as herein expressly provided. Nor shall any person appear as contestant in such amateur exhibition who prior thereto has received any compensation or reward in any form for displaying, exercising or giving any example of his skill in or knowledge of athletic exercises, or for rendering services of any kind to any athletic organization or to any person or persons as trainer, coach, instructor or otherwise, or who shall have been employed in any manner professionally by reason of his athletic skill or knowledge; provided, however, that a medal or trophy may be awarded to each contestant in such amateur boxing exhibitions, not to exceed in value the sum of \$35.00 each, which such medal or trophy must have engraved thereon the name of the winner and the date of the event; but no portion of any admission fee or fees charged or received for any amateur boxing exhibition shall be paid or given to any contestant in such amateur boxing exhibition, either directly or indirectly, nor shall any gift be given to or received by such contestants for participating in such boxing exhibition, except said medal or trophy. At every amateur boxing exhibition held in this state and permitted by this section of the Penal Code, any sheriff, constable, marshal, policeman or other peace officer of the city,

county or other political subdivision, where such exhibition is being held, shall have the right to, and it is hereby declared to be his duty to stop such exhibition, whenever it shall appear to him that the contestants are so unevenly matched or for any other reason, the said contestants have been, or either of them, has been seriously injured or there is danger that said contestants, or either of them, will be seriously injured if such contest continues, and he may call to his assistance in enforcing his order to stop said exhibition, as many peace officers or male citizens of the state as may be necessary for that purpose. Provided, further, that any contestant who shall continue to participate in such exhibition after an order to stop such exhibition shall have been given by such peace officer, or who shall violate any of the regulations herein prescribed, for governing amateur boxing exhibitions, shall be deemed guilty of violating this section of the Penal Code and subject to the punishment herein provided.

Nothing in this section contained shall be construed to prevent any county, city and county, or incorporated city or town from prohibiting, by ordinance, the holding or conducting of any boxing exhibition, or any person from engaging in any such boxing exhibition therein.

Comment. Section 412 is amended to reflect elimination of the justice court and the office of constable. See 1994 Cal. Stat. res. ch. 113 (SCA 7) (Prop. 191, approved Nov. 8, 1994 & operative Jan. 1, 1995).

Note. Section 412 could also benefit from extensive stylistic clean-up to conform to modern drafting conventions (e.g., to make it gender-neutral, insert paragraph breaks, label paragraphs, delete the disfavored word “such,” and eliminate “of the Penal Code” where that phrase is unnecessary). The above amendment does not incorporate such clean-up, because that would unduly distract from the revision being proposed to reflect trial court restructuring.

Penal Code § 413 (amended). Arrest warrant and ban on spectators

413. Every person wilfully present as spectator at any fight or contention prohibited in the preceding section, is guilty of a misdemeanor.

An information may be laid before any of the magistrates mentioned in section eight hundred and eight of this code, that a person has taken steps toward promoting or participating in a contemplated pugilistic contest, or fight, or ring or prize fight, or sparring or boxing exhibition, prohibited under the provision of section four hundred and twelve of this code, or is about to commit an offense under said section four hundred and twelve. When said information is laid before said magistrate, he must examine, on oath, the informer, and any witness or witnesses he may produce, and must take their depositions in writing and cause them to be subscribed by the parties making them. If it appears from the deposition that there is just reason to fear the commission of the offense contemplated by the person so informed against, the magistrate must issue a warrant directed generally to the sheriff of the county, or any ~~constable~~, marshal, or policeman in the state, reciting the substance of the information and commanding the officer forthwith to arrest the person informed against and bring him before the magistrate. When the person informed against is brought before the magistrate, if the charge be controverted, the magistrate must take testimony in relation thereto. The evidence must be reduced to writing and subscribed by the witnesses. If it appears there is no just reason to fear the commission of the offense alleged to have been contemplated, the person complained against must be discharged. If, however, there is just reason to fear the commission of the offense, the person complained of must be required to enter into an undertaking in such sum, not less than three thousand dollars, as the magistrate may direct, with one or more sufficient sureties, conditioned that such person will not, for a period of one year thereafter, commit any such contemplated offense.

Comment. Section 413 is amended to reflect elimination of the justice court and the office of constable. See 1994 Cal. Stat. res. ch. 113 (SCA 7) (Prop. 191, approved Nov. 8, 1994 & operative Jan. 1, 1995).

Note. Section 413 could also benefit from extensive stylistic clean-up to conform to modern drafting conventions (e.g., to make it gender-neutral,

insert paragraph breaks, label paragraphs, delete the disfavored word “such,” and use conventional means of referring to other code sections). The above amendment does not incorporate such clean-up, because that would unduly distract from the revision being proposed to reflect trial court restructuring.

PROPOSED LEGISLATION

Corp. Code § 14502 (amended). Humane officers

14502. (a)(1)(A)(i) On and after July 1, 1996, no entity, other than a humane society or society for the prevention of cruelty to animals, shall be eligible to petition for confirmation of an appointment of any individual as a humane officer, the duty of which shall be the enforcement of the laws for the prevention of cruelty to animals.

(ii) On and after July 1, 1996, only a person who meets the requirements of this section may be appointed as, or perform the duties of, a humane officer.

(iii) Any person appointed as a humane officer prior to July 1, 1996, may continue to serve as a humane officer until the expiration of the term of appointment only if the appointing society maintains records pursuant to subparagraph (B) documenting that both the appointing society and the humane officer meet the requirements of this section.

(B) Each humane society or society for the prevention of cruelty to animals for which an individual is acting as a humane officer shall maintain complete and accurate records documenting that the individual has successfully completed all requirements established in this section and shall make those records available, upon request, to the superior court, the Attorney General, or any entity duly authorized to review that information, including the State Humane Association of California. The records shall include the full name and address of each humane officer.

(2) The humane society or society for the prevention of cruelty to animals shall possess insurance of at least one million dollars (\$1,000,000) for liability for bodily injury or property damage.

(3) Each appointment of a humane officer shall be by separate resolution by the board of directors or trustees of the humane society or society for the prevention of cruelty to animals duly entered in its minutes. The resolution shall state the full name and address of the principal office of the appointing society, the full name of the person so appointed, the fact that he or she is a citizen

of the State of California, that he or she has met the training requirements set forth in subdivision (h), and whether he or she is authorized to carry a weapon pursuant to this section. The resolution shall also designate the number of the badge to be allotted to the officer, and the date on which the term of office shall expire.

(b) A humane society or a society for the prevention of cruelty to animals seeking confirmation of a humane officer's appointment shall comply with each of the following provisions:

(1) Prior to filing a Petition for Order Confirming Appointment of a Humane Officer under paragraph (3), the humane society or society for the prevention of cruelty to animals shall submit to the Department of Justice fingerprint images and related information of all humane officer applicants for the purposes of obtaining information as to the existence and content of a record of state and federal convictions and state and federal arrests and also information as to the existence and content of a record of state and federal arrests for which the Department of Justice establishes that the person is free on bail or on his or her own recognizance pending trial or appeal.

(A) When received, the Department of Justice shall forward to the Federal Bureau of Investigation requests for federal summary criminal history information received pursuant to this section. The Department of Justice shall review the information returned from the Federal Bureau of Investigation and compile and disseminate a fitness determination regarding the humane officer applicants to the humane society or society for the prevention of cruelty to animals.

(B) The Department of Justice shall provide a state response to the humane society or society for the prevention of cruelty to animals pursuant to paragraph (1) of subdivision (p) of Section 11105 of the Penal Code.

(C) The humane society or society for the prevention of cruelty to animals shall request from the Department of Justice subsequent arrest notification service, as provided pursuant to Section 11105.2

of the Penal Code, for persons whose appointments are confirmed as described in subdivision (c).

(D) The Department of Justice shall charge a fee sufficient to cover the cost of processing the request described in this paragraph.

(2) When filing a Petition for Order Confirming Appointment of a Humane Officer under paragraph (3), the humane society or society for the prevention of cruelty to animals shall serve a copy of the petition on each of the following:

(A) The police department having jurisdiction in the city in which the principal office of the appointing society is located.

(B) The sheriff's department having jurisdiction in the county in which the principal office of the appointing society is located.

(C) The Department of the California Highway Patrol.

(D) The State Humane Association of California.

(E) The animal control agency having jurisdiction in the city in which the principal office of the appointing society is located. If the sheriff's department or police department entitled to notice under subparagraph (A) or (B) provides animal control services for the city in which the principal office of the appointing society is located, no separate notice is required under this subparagraph.

(F) The Department of Justice.

(3) The humane society or society for the prevention of cruelty to animals shall file with the superior court in and for the county or city and county in which the principal office of the humane society is located a Petition for Order Confirming Appointment of a Humane Officer, and shall attach to the petition all of the following:

(A) A copy of the resolution appointing the person, duly certified to be correct by the president and secretary of the society and attested by its seal.

(B) A copy of the criminal record offender information, if any, obtained regarding the person pursuant to paragraph (1).

(C) Proof of the society's proper incorporation in compliance with Part 9 (commencing with Section 10400) of Division 2,

including the date the articles of incorporation were filed with the Secretary of State.

(D) A copy of the society's liability insurance policy for bodily injury or property damage in the amount of at least one million dollars (\$1,000,000).

(E) Documentation establishing that the appointee has satisfactorily completed the training requirements set forth in this section.

(F) Documentation establishing that the society has a written agreement with another entity, such as a public or private animal shelter or licensed veterinary clinic, that (i) provides for the humane care and treatment of any animals seized by the society, (ii) is capable of preserving evidence that may be used to prosecute an animal cruelty case, and (iii) is compliant with all applicable federal, state, and local laws, including licensing laws. Alternatively, the society may provide documentation that it is operating its own animal shelter that meets the requirements of clauses (i), (ii), and (iii).

(G) If the society has not previously appointed a humane officer:

(i) An affidavit signed under penalty of perjury from the president of the society that demonstrates the society's competence to appoint a humane officer by providing information, including, but not limited to, the following:

(I) Partnerships or collaborations, if any, with other nonprofit or community agencies.

(II) Cash reserve on hand, if any, to pay for veterinary expenses, housing, food, and care of seized animals.

(III) Established donor base, if any.

(IV) Current or prior law enforcement, legal, or other relevant experience, if any, of persons who will supervise the appointee.

(V) Current or prior experience of managers, if any, in operating a society or other nonprofit organization.

(VI) Statement that each board member is in good standing in the community and has not been convicted of a misdemeanor or felony involving animals.

(VII) Ongoing training beyond the minimum required for appointment of the humane officer, if any.

(VIII) The need for a humane officer in the society's county.

(IX) Any other documentation demonstrating compliance with applicable federal, state, or local laws.

(ii) Affidavits, if any, from personnel of local animal control agencies, law enforcement agencies, or other societies pertaining to the appointee's fitness to act as a humane officer.

(H) As the last page, proof of service of a copy of the petition upon those parties required to be served.

(4) Any party described in paragraph (2) may file an opposition to the petition described in paragraph (3). All papers filed in opposition to the petition and in reply to the opposition shall conform to law and motion pleading requirements, pursuant to Rule 3.1113(d) of the California Rules of Court. An opposition shall not exceed 15 pages and a reply shall not exceed 10 pages, excluding exhibits and declarations. The opposition shall be limited to the competency of the society to appoint and supervise a humane officer and the qualifications, background, and fitness of the appointee that are specific to the work of a humane officer.

(A) Any opposition shall be filed no later than 15 court days after the petition is filed with the court. Any opposition shall be served on all parties indicated on the proof of service attached to the petition.

(B) The petitioner's reply, if any, to the opposition shall be filed within 10 court days after service of the opposition. The reply shall be served on all parties listed in the proof of service attached to the petition and to any other person who has filed an opposition.

(C) The court shall rule on the petition without a hearing unless the court notifies the parties of an intention to hold a hearing.

(D) The petitioner shall serve a certified copy of the court's order ruling on the petition on all parties listed in the proof of service attached to the petition and to any other person or entity who has filed an opposition.

(c)(1) Upon receipt of the Petition for Order Confirming Appointment of a Humane Officer, the court shall first determine

the society's date of incorporation, and the length of time between the date the society filed its articles of incorporation with the Secretary of State and the date it filed the petition described in paragraph (3) of subdivision (b) with the court. If the society was incorporated on or after January 1, 2011, then the following shall apply:

(A) For a petition to confirm appointment of a level 1 humane officer, the court shall issue an order denying confirmation of the appointment if a minimum of five years has not elapsed from the date the society filed its articles of incorporation with the Secretary of State to the date it filed the petition.

(B) For a petition to confirm appointment of a level 2 humane officer, the court shall issue an order denying confirmation of the appointment if a minimum of one year has not elapsed from the date the society filed its articles of incorporation with the Secretary of State to the date it filed the petition.

(C) For a petition to confirm appointment of either a level 1 or level 2 humane officer, the court shall issue an order denying confirmation of the appointment if the society has not established, through submission of appropriate documentation, that the society is either operating its own animal shelter or has a written agreement with another entity, in compliance with subparagraph (F) of paragraph (3) of subdivision (b).

(2) If the court has not issued an order denying the petition pursuant to paragraph (1), then the court shall review the matter of the appointee's qualifications and fitness to act as a humane officer. The court shall also consider any documentation it has received in support of, or in opposition to, the confirmation of the person's appointment. If the court finds that the appointee is qualified and fit to act as a humane officer, the court shall issue an order confirming the appointment. The society shall thereupon file a certified copy of the court order in the office of the county clerk of the county or city and county in which the court is located. The appointee shall, at the same time, take and subscribe ~~the~~ an oath of office prescribed for ~~constables or other~~ peace officers. The society

shall also provide a copy of the Order Confirming Appointment to the State Humane Association of California and the Department of Justice. The Department of Justice may charge a reasonable fee sufficient to cover the costs of maintaining records of Orders Confirming Appointment. If the court does not find the appointee qualified and fit to act as a humane officer, the court shall issue an order denying confirmation of the appointment.

(d) If the court grants the petition, the county clerk shall immediately enter in a book to be kept in his or her office and designated "Record of Humane Officers" the name of the officer, the name of the society appointing him or her, the number of his or her badge, the date of the filing, and the case number of the court order confirming the appointment. At the time of the filing, the county clerk shall collect from the society a fee of five dollars (\$5), which shall be full payment for all services to be performed by the county clerk under this section.

(e) All appointments of humane officers shall automatically expire if the society disbands or legally dissolves.

(f)(1) The society appointing an officer may revoke an appointment at any time by filing in the office of the county clerk in which the appointment of the officer is recorded a copy of the revocation in writing under the letterhead of the society and duly certified by its executive officer. Upon the filing the county clerk shall enter the fact of the revocation and the date of the filing thereof opposite the name of the officer in the record of humane officers.

(2) Notwithstanding paragraph (1), any duly authorized sheriff or local police agency or the State Humane Association of California may initiate a revocation hearing by filing a petition to Revoke Appointment of a Humane Officer. The petition shall show cause why an appointment should be revoked and shall be made to the superior court in the jurisdiction of the appointment. Filing, service, and format of the petition and any oppositions and reply papers shall conform to the law and motion requirements under the Code of Civil Procedure, California Rules of Court, and this code. A proceeding pursuant to this paragraph shall be a special

proceeding within the meaning of Section 23 of the Code of Civil Procedure.

(A) Notice of the hearing date and a copy of the petition shall be served in the same manner as a summons upon the humane officer subject to the petition, the society that appointed the officer, the agencies and association described in paragraph (2) of subdivision (b); except the party filing the petition shall not be required to serve copies of those documents upon itself.

(B) Upon a finding of good cause, the court shall issue an order granting the petition to revoke the appointment. The county clerk shall immediately enter the revocation and the date of the court order opposite the name of the officer in the record of humane officers. The clerk of the superior court shall give notice of the order to the parties described in subparagraph (A) and to the county clerk-recorder.

(g) The society appointing the humane officer shall pay the training expenses of the humane officer attending the training required pursuant to this section.

(h)(1)(A) A level 1 humane officer is not a peace officer, but may exercise the powers of a peace officer at all places within the state in order to prevent the perpetration of any act of cruelty upon any animal and to that end may summon to his or her aid any bystander. A level 1 humane officer may use reasonable force necessary to prevent the perpetration of any act of cruelty upon any animal.

(B) A level 1 humane officer may make arrests for the violation of any penal law of this state relating to or affecting animals in the same manner as any peace officer and may serve search warrants.

(C) A level 1 humane officer is authorized to carry firearms while exercising the duties of a humane officer, upon satisfactory completion of the training specified in subparagraph (D), if the requirements in subparagraph (F) are met.

(D) A level 1 humane officer shall, prior to appointment, provide evidence satisfactory to the appointing society that he or she has successfully completed the following requirements:

(i) At least 20 hours of a course of training in animal care sponsored or provided by an accredited postsecondary institution or any other provider approved by the California Veterinary Medical Association the focus of which shall be the identification of disease, injury, and neglect in domestic animals and livestock.

(ii) At least 40 hours of a course of training in the state humane laws relating to the powers and duties of a humane officer, sponsored or provided by an accredited postsecondary institution, law enforcement agency, or the State Humane Association of California.

(iii) The basic training for a level 1 reserve officer by the Commission on Peace Officer Standards and Training pursuant to paragraph (1) of subdivision (a) of Section 832.6 of the Penal Code.

(E) A person shall not be appointed as a level 1 humane officer until he or she meets the criteria in Sections 1029, 1030, and 1031 of the Government Code. A humane society or society for the prevention of cruelty to animals shall complete a background investigation, using standards defined by the Commission on Peace Officer Standards and Training as guidelines for all level 1 humane officer appointments.

(F)(i) Notwithstanding any other provision of this section, a level 1 humane officer may carry a firearm only if authorized by, and only under the terms and conditions specified by, his or her appointing society.

(ii) Notwithstanding any other provision of this section, a level 1 humane officer shall not be authorized to carry a firearm unless and until his or her appointing society has adopted a policy on the use of deadly force by its officers and the officer has been instructed in that policy.

(2)(A) A level 2 humane officer is not a peace officer, but may exercise the powers of a peace officer at all places within the state in order to prevent the perpetration of any act of cruelty upon any animal and to that end may summon to his or her aid any bystander. A level 2 humane officer may use reasonable force

necessary to prevent the perpetration of any act of cruelty upon any animal.

(B) A level 2 humane officer may make arrests for the violation of any penal law of this state relating to or affecting animals in the same manner as any peace officer and may serve search warrants during the course and within the scope of appointment, upon the successful completion of a course relating to the exercise of the police powers specified in Section 832 of the Penal Code, except the power to carry and use firearms.

(C) A level 2 humane officer is not authorized to carry firearms.

(D) A level 2 humane officer shall, prior to appointment, provide evidence satisfactory to the appointing society that he or she has successfully completed courses of training in the following subjects:

(i) At least 20 hours of a course of training in animal care sponsored or provided by an accredited postsecondary institution or any other provider approved by the California Veterinary Medical Association, the focus of which is the identification of disease, injury, and neglect in domestic animals and livestock.

(ii) At least 40 hours of a course of training in the state humane laws relating to the powers and duties of a humane officer, sponsored or provided by an accredited postsecondary institution, law enforcement agency, or the State Humane Association of California.

(E) A person shall not be appointed as a level 2 humane officer until he or she meets the criteria in Sections 1029, 1030, and 1031 of the Government Code. A humane society or society for the prevention of cruelty to animals shall complete a background investigation, using standards defined by the Commission on Peace Officer Standards and Training as guidelines, for all level 2 humane officer appointments.

(3) During each three-year period following the date on which the certified copy of the court order confirming the appointment of a humane officer was filed with the county clerk, the humane officer shall complete 40 hours of continuing education and

training relating to the powers and duties of a humane officer, which education and training shall be sponsored or provided by an accredited postsecondary institution, law enforcement agency, or the State Humane Association of California. A certificate of compliance shall be served no later than 21 days after the expiration of each three-year period on the Department of Justice with copies served on the superior court, agencies, and associations described in subparagraphs (A) through (E) of paragraph (2) of subdivision (b). The Department of Justice may charge a reasonable fee sufficient to cover the costs of maintaining records of certificates of compliance. The certificate of compliance shall also include documentation that the humane society or society for the prevention of cruelty to animals is in compliance with subparagraph (F) of paragraph (3) of subdivision (b). Service on the Department of Justice shall be in compliance with procedures set forth by the Department of Justice. The Department of Justice shall post the filing procedures, as they may be updated from time to time, on its Internet Web site. Failure to file the certificate of compliance with the Department of Justice no later than 21 days after the expiration of a three-year period shall result in immediate revocation of the appointment.

(4) If the humane officer is authorized to carry a firearm, he or she shall complete ongoing weapons training and range qualifications at least every six months pursuant to subdivision (t) of Section 830.3 of the Penal Code. A certificate of compliance pursuant to this section shall be served no later than 21 days after the expiration of a six-month period on the Department of Justice with copies served on the superior court, and on the agencies and associations described in subparagraphs (A) through (E) of paragraph (2) of subdivision (b). The Department of Justice may charge a reasonable fee sufficient to cover the costs of maintaining records of certificates of compliance. The certificate of compliance shall also include documentation that the humane society or society for the prevention of cruelty to animals is in compliance with subparagraph (F) of paragraph (3) of subdivision (b). Service on the Department of Justice shall be in compliance with

procedures set forth by the Department of Justice. The Department of Justice shall post the filing procedures, as they may be updated from time to time, on its Internet Web site. Failure to file the certificate of compliance with the Department of Justice no later than 21 days after the expiration of a six-month period shall result in immediate revocation of the appointment.

(i) Every humane officer shall, when making an arrest, exhibit and expose a suitable badge to be adopted by the society under this part of which he or she is an appointee which shall bear its name and a number. Uniforms worn by humane officers shall prominently display the name of the appointing society. Humane officer uniforms shall not display the words "state" or "California," except to the extent that one or both of those words are part of the appointing society's incorporated name.

(j) Any person resisting a humane officer in the performance of his or her duty as provided in this section is guilty of a misdemeanor. Any person who has not been appointed and qualified as a humane officer as provided in this section, or whose appointment has been revoked as provided in this section, or whose appointment, having expired, has not been renewed as provided in this section, who shall represent himself or herself to be or shall attempt to act as an officer shall be guilty of a misdemeanor.

(k) No humane officer shall serve a search warrant without providing prior notice to local law enforcement agencies operating within that jurisdiction.

(l) Any humane society, society for the prevention of cruelty to animals, or person, who knowingly provides a court with false or forged documentation for the appointment of a humane officer, is guilty of a misdemeanor and shall be punished by a fine of up to ten thousand dollars (\$10,000).

(m) Except as otherwise provided by this section, a humane officer shall serve only in the county in which the court that appointed him or her sits. A humane officer may serve in another county if the humane officer gives notice requesting consent to the

sheriff of the county in which he or she intends to serve, and acquires consent from that sheriff of the county in which he or she intends to serve, or from a person authorized by the sheriff to give that consent. A sheriff shall promptly respond to any request by a humane officer to serve in his or her jurisdiction and any request shall not be unreasonably denied.

Comment. Paragraph (2) of subdivision (c) of Section 14502 is amended to reflect elimination of the justice court and the office of constable. See 1994 Cal. Stat. res. ch. 113 (SCA 7) (Prop. 191, approved Nov. 8, 1994 & operative Jan. 1, 1995).
